

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE CARL REID,

Defendant-Appellant.

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UNPUBLISHED

September 20, 2005

No. 256237

Saginaw Circuit Court

LC No. 03-023311-FC

Before: Sawyer, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions for second-degree murder, MCL 750.317; possession of a firearm by a felon, MCL 750.224f; carrying a concealed weapon, MCL 750.227; and possession of a firearm during the commission of a felony (two counts), MCL 750.227b. Defendant was sentenced as a habitual offender-third, MCL 769.11, to life imprisonment for the murder conviction; two to ten years' imprisonment for carrying a concealed weapon; two to ten years' imprisonment for possession of a firearm by a felon; and two years' consecutive imprisonment for each count of felony-firearm. We affirm defendant's convictions and prison sentences.

Defendant shot and killed Eric Wilson following a confrontation during a sidewalk dice game at a neighborhood party on August 10, 2002. Testimony revealed that defendant and victim harbored a grudge that dated back to their time in prison together. With few exceptions, the trial witnesses had past convictions or shared a myriad of relationships to each other. As such, the prosecutor and defendant attempted to impeach nearly every opposing witness. The prosecutor's witnesses included Darlene Jones, defendant's aunt. Jones testified at defendant's preliminary examination that defendant confessed the shooting to her. After the preliminary examination, Jones was transferred to Minnesota on an outstanding warrant for absconding from parole. The prosecutor claimed he could not locate Jones by the time of trial and submitted an affidavit that she had absconded again from Minnesota authorities. After declaring the witness unavailable, the trial court allowed Jones' earlier testimony to be read into the record. At another point, the prosecutor attempted to impeach defense witness Calvin Jones by displaying a gun found by police in Jones' home following a valid warrant search. However, the gun displayed by the prosecutor was not the murder weapon, and accordingly, defendant claims that he was denied a fair trial by the prosecutor waiving a gun known not to have been the murder weapon in front of the jury. On appeal, defendant raises two other issues: whether the prosecutor used due

diligence to find Ms. Jones and ensure defendant's right to confrontation; and whether the evidence presented was sufficient to support the convictions.

All relevant evidence is admissible, except as otherwise provided by constitution or rule, and irrelevant evidence is not admissible. MRE 402. Evidence is not inadmissible merely because it is prejudicial; it must be unfairly prejudicial to be excluded. Presumably, all evidence submitted by an opponent is prejudicial in that it attempts to prove the opponent's case. "Unfair prejudice" is that which tends to adversely affect the other party's position by injecting considerations extraneous to the merits of the case, such as the jury's bias, sympathy, anger or shock. *People v Pickens*, 446 Mich 298, 336-337; 521 NW2d 797 (1994); citing *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984).

A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. Evidence of a witness's bias is almost always relevant. The trial court has wide discretion regarding the admissibility of evidence of bias. *People v Layher*, 464 Mich 756, 765; 631 NW2d 281 (2001). In this case, the trial court used its wide discretion to allow cross-examination of defense witness Calvin Jones about the gun that was found in his home in an attempt to rehabilitate Ms. Jones' testimony as well as impute bias to Mr. Jones' testimony. The gun itself was not admitted into evidence, and the prosecutor and the trial judge clearly informed the jury that it was not involved in this case but only served to corroborate Ms. Jones' testimony about the events following the murder. Moreover, defense counsel opened the door to the prosecutor's questions by asking Mr. Jones whether the police had executed a search warrant of his house because of Ms. Jones' allegation that he was given the murder weapon by defendant. Mr. Jones acknowledged the search but flatly denied that the police found the gun. If left alone, that testimony might have given the jury the impression that there never was a gun in the house and that Ms. Jones was lying in her statements to the police. Thus, the prosecutor's questions clarified that, even if the gun was not the actual murder weapon, Ms. Jones was led to believe such and, therefore, her statements were truthful. Moreover, there is no indication in the record that the presence of the handgun was so misleading or inflammatory that it denied defendant a fair trial. Although defense counsel described the prosecutor as "waving" the handgun around during cross-examination, there is no indication on the record that he did so in a particularly threatening manner, such as by pointing it at the witness or the jury or by pulling the trigger in court. Merely displaying the gun did not deny defendant a fair trial. Under the circumstances, we hold that (1) the trial court did not abuse its discretion in allowing the prosecutor to question Mr. Jones about the handgun, and (2) defendant was not denied a fair trial simply because the prosecutor displayed the handgun to the jury.

With regard to admitting Ms. Jones' preliminary exam testimony, the trial court did not abuse its discretion because the prosecutor employed due diligence in attempting to find Ms. Jones. Under *People v Bean*, 457 Mich 677; 580 NW2d 390 (1998), due diligence is a "diligent, good faith effort" to locate the witness as determined by the facts and circumstances of the case. *Id* at 684. The prosecutor in this case attempted to find her through Minnesota authorities, but Ms. Jones had absconded, her whereabouts were unknown, and a warrant for her arrest had been issued. The prosecutor satisfied the requirements under MRE 804(a)(5) to show the witness' unavailability. Furthermore, the trial court noted that defense counsel had ample opportunity to cross-examine Ms. Jones at the preliminary examination. We therefore find no error in allowing her preliminary examination testimony to be read into the record at trial.

The standard for reviewing an issue concerning sufficiency of the evidence has been explained on several prior occasions, most notably in *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992) *n3*; and in *People v Hampton*, 407 Mich 354, 366, 285 NW2d 284 (1979) wherein this court was instructed to (1) review the evidence in the light most favorable to the prosecution, and (2) after review of the evidence decide whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 148 (2002). In deciding whether there is sufficient evidence to sustain a conviction, we cannot find any evidence raised by defendant on appeal that the jury has not already weighed, evaluated, and assigned a relative value, which is its province to do. This is because most of the witnesses in this case, excluding law enforcement, had prior criminal records or were related to either the victim or the defendant. As such, the credibility of the witnesses for the prosecution and the defense were subject to debate, which the prosecution and defense engaged in extensively. Therefore, when the evidence is viewed in a light most favorable to the prosecutor, a rational trier of fact could reasonably convict defendant of second-degree murder as well as the other offenses. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

Affirmed.

/s/ David H. Sawyer  
/s/ Michael J. Talbot  
/s/ Stephen L. Borrello